

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FILED

SEP 11 2012

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

V.

**JUDSON MOTORS, LTD.,
D/B/A UNIVERSAL TOYOTA,**

Defendant.

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

Civil Action No. 5:11-cv-00776-XR

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Judson Motors, Ltd. d/b/a Universal Toyota ("Universal Toyota"). The EEOC filed its Complaint in this lawsuit on September 19, 2011, under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §626(b) (the "ADEA"), to correct alleged unlawful employment practices on the basis of age with regard to age-based discrimination in sales of Scion brand vehicles, and to provide appropriate relief to Mitchell Creel, Luis G. SantaMaria, and a class of similarly situated individuals forty (40) years of age or older, including Manuel Portillo and Victor Quinones who were adversely affected by such practices. Universal Toyota denies that it discriminated against any individuals on the basis of their age in any manner.

The EEOC and Universal Toyota agree to compromise and settle this action pursuant to the terms delineated in this Consent Decree. Universal Toyota asserts that by entering into this Consent Decree, it makes no admission of liability or wrongdoing, and makes no admission that the conduct was discriminatory or illegal.

1. This Court has jurisdiction of the subject matter of this action, and the parties acknowledge that venue is proper.

2. This Consent Decree resolves all issues raised in the EEOC's Complaint. The EEOC waives further litigation of all issues raised in the above-referenced Complaint. The EEOC expressly reserves its right, however, to process and litigate any other charges, if any, which may be pending before the EEOC or filed in the future against Universal Toyota.

3. The duration of this Consent Decree shall be two (2) years from the date of its entry with the Court. The Parties agree that the Court shall retain jurisdiction of this case during the term of this Consent Decree to enforce compliance and to take any action necessary and/or appropriate for its interpretation, execution, modification and/or adjudication of disputes.

4. During the term of this Consent Decree, Universal Toyota, its officers, successors, assigns, agents, servants, employees, attorneys, and all persons in active concert or participation with them voluntarily agree to be enjoined from engaging in retaliation, age-based discrimination in sales of Scion brand vehicles. Prohibited employment discrimination with regard to age-based discrimination in sales of Scion brand vehicles includes, but is not limited to:

- (a) Threatening, intimidating, down grading pay plans, denying equal opportunity in employment and/or taking any adverse employment action against an employee or former employee because he/she: (1) engaged in statutorily protected activity by opposition to an employment practice believed to be unlawful discrimination, or (2) participated in the filing of a charge or in any other proceedings involving claims of discrimination.
- (b) Refusing to permit individuals forty (40) years of age or older to sell automobiles sold under the Scion brand because they are forty years of age or older; thereby depriving persons in the protected age group from equal opportunity with regard to wages and benefits; and
- (c) Maintaining any practice or policy that violates the ADEA by depriving or tending to deprive any individual of employment opportunities because of such individual's age or protected conduct.

5. Within thirty (30) days of the entry of this Consent Decree, Universal Toyota shall pay, in settlement of this dispute, a total sum of \$140,000 (ONE HUNDRED FORTY THOUSAND). Payment will be apportioned as follows:

- (a) Mitchell Creel (\$76,000)

Payment shall be mailed directly to Mitchell Creel, via certified mail, at 2476 Sombra Hill, Schertz, Texas 78154-2637.

- (b) Luis SantaMaria (\$41,000)

Payment shall be mailed directly to Luis SantaMaria, via certified mail, at 3119 Vaquero Pass, San Antonio, Texas 78247.

- (c) Manuel Portillo (\$15,000)

Payment shall be mailed directly to Manuel Portillo, via certified mail, at 5414 Stoneshire, San Antonio, Texas 78218.

- (d) Victor Quinones (\$8,000)

Payment shall be mailed directly to Victor Quinones, via certified mail, at 21423 Encino Caliza, San Antonio, Texas 78259.

A copy of each settlement check and any accompanying transmittal documents shall be forwarded to the EEOC to the attention of Judith G. Taylor, Supervisory Trial Attorney, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

6. Within forty-five (45) days of the entry of this Consent Decree, Universal Toyota will reinforce its policies on age discrimination and retaliation that meets the following criteria:

- (a) States that Universal Toyota: (i) prohibits discrimination against any employee on the basis of age in violation of the ADEA; and, (ii) prohibits any act, policy or practice that has the effect denying employment on the basis of age in violation of the ADEA;
- (b) States that Universal Toyota (i) prohibits retaliation against any employee who has engaged in protected conduct under the ADEA; and, (ii) prohibits any act, policy or practice that might dissuade a reasonable person from making or supporting a claim of discrimination;

- (c) Provides for prompt investigation of discrimination and/or retaliation complaints from both employees and employment candidates and provides for prompt action, which is appropriate and effective, to remedy the discrimination;
- (d) Provides that upon the conclusion of Universal Toyota's investigation, the results of the investigation and the remedial actions taken or proposed will be promptly communicated in writing to the complaining party;
- (e) Provides for substantial and progressive discipline for violating Universal Toyota's discrimination policy up to and including discharge; and
- (f) Requires that all employees and employment candidates report incidents of discrimination and retaliation to the person(s) identified by Universal Toyota as the person(s) charged with the responsibility for investigating discrimination and retaliation complaints.

7. Within ninety (90) days of entry of this Consent Decree, Universal Toyota shall, through J. Tullos Wells of BRACEWELL & GIULIANI LLP, or another attorney board certified in labor and employment law licensed in the State of Texas, provide not less than three (3) hours of training to all its supervisors and managers with authority to hire, promote, terminate and/or demote employees on Universal Toyota's policies on retaliation and age discrimination. The training shall explain that discrimination on the basis of age, in particular, refusing to permit older employees to sell Scion band vehicles violates the ADEA; and it shall instruct what conduct constitutes a violation of the ADEA, including retaliation, and explain the damaging effects of age discrimination. The EEOC reserves the right to approve of the trainer and training materials and will not unreasonably withhold such approval.

8. Universal Toyota, its agents, officers, employees, and servants, in furnishing oral or written references concerning Mr. Creel, Mr. SantaMaria, Mr. Quiñones and/or Mr. Portillo to prospective employers, shall provide a neutral reference following its standard practice. Universal Toyota shall make no reference to matters arising under or relating to any charge of

employment discrimination filed by Mr. Creel or Mr. SantaMaria with the EEOC and/or this lawsuit. This provision shall survive the expiration of the Consent Decree.

9. Within ten (10) days of the entry of this Consent Decree, Universal Toyota shall post copies of the Notice attached to this Consent Decree in conspicuous locations easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Consent Decree. Universal Toyota shall ensure that the postings are not altered, defaced or covered by any other material.

10. During the term of this Consent Decree, with ten (10) days prior written notice given to counsel for Universal Toyota, J. Tullos Wells, Bracewell & Giuliani LLP, 106 S. St. Mary's Street, Suite 800, San Antonio, Texas 78205, the EEOC shall have the right to ensure compliance with the terms of this Consent Decree and may: conduct inspections at Universal Toyota; interview employees; and, examine and copy relevant documents.

11. Universal Toyota shall bear the costs associated with administering and implementing the provisions of this Consent Decree.

12. The terms of this Consent Decree shall be binding upon the EEOC and Defendant, their respective agents, officers, employees, servants, successors, and assigns, as to the issues resolved herein.

13. When this Consent Decree requires the submission by Defendant of documents or other materials to the EEOC, such documents or other materials shall be mailed to Judith G. Taylor, Supervisory Trial Attorney, United States Equal Employment Opportunity Commission, San Antonio Field Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

SO ORDERED AND ENTERED this 11th day of September, 2012.



THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

P.DAVID LOPEZ
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

/s/ Robert A. Canino w/permission
by *Judith G. Taylor*

ROBERT A. CANINO
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/s/ J. Tullos Wells w/permission
by *Judith G. Taylor*

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ATTORNEYS FOR DEFENDANT

/s/ Judith G. Taylor

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/s/ David Rivela w/permission
by *Judith G. Taylor*

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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ATTORNEYS FOR PLAINTIFF

UNIVERSAL TOYOTA MAINTAINS A ZERO TOLERANCE POLICY AND PRACTICE PROHIBITING UNLAWFUL DISCRIMINATION IN EMPLOYMENT OF ANY TYPE. TO MAKE SURE ALL OF OUR EMPLOYEES, INCLUDING MANAGERS AND SUPERVISORS, ARE AWARE OF THIS POLICY, WE ARE POSTING THIS NOTICE TO ALL EMPLOYEES:

NOTICE TO ALL EMPLOYEES

POLICY: Discrimination of any kind can and often will detract from an employee's job performance, discourage employees from remaining on the job, keep employees from advancing in their careers and lowers overall employee morale and productivity. It is the policy of Judson Motors, Ltd. d/b/a Universal Toyota that discrimination based on age is unacceptable conduct and will not be condoned.

PURPOSE: It is the purpose of this policy to reaffirm and amplify the position of the Age Discrimination in Employment Act (ADEA), as amended, and the Equal Employment Opportunity Commission's guidelines on discrimination based on age, and to reiterate Judson Motors, Ltd. d/b/a Universal Toyota's policy on discrimination on discriminatory conduct prohibited by the ADEA.

SCOPE: This policy extends to all employees of Judson Motors, Ltd. d/b/a Universal Toyota, including management, non-management, temporary and/or probationary.

DEFINITION: Age discrimination occurs when an employment decision is made based on a person's age rather than on legitimate factors. Put another way, age discrimination occurs when an employer rejects an individual forty (40) years of age or older in favor of a younger individual. Discrimination is often a result of stereotypes. In some cases, those stereotypes extend to all members of a disfavored group. If age plays a role in the employment decision-making process, the employment decision is illegal age discrimination. Some examples of age discrimination are:

- Refusing to hire a person forty (40) years of age or older;
- Treating employees under forty (40) years of age better than employees forty (40) years of age or older;
- Refusing to offer training courses to employees who are forty (40) years of age or older;
- Refusing to hire anyone who is forty (40) years of age or older, simply to maintain a youthful company image;
- Refusing to promote individuals forty (40) years of age or older, and/or
- Refusing to allow individuals forty (40) years of age or older to sell Scion brand vehicles.

This list is in no means exhaustive. There are other forms of age discrimination.

DEFINITION: Retaliation is the punishment of an employee for engaging in a protected activity, such as filing a discrimination charge, opposing unlawful employer practices, and/or testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the ADEA. Some examples of retaliation are:

- Suspension;
- Reduction of pay;
- Discharge;
- Reassignment of job duties;
- Reduction of work hours; and/or
- Reassignment to a different work shift.

This list is in no means exhaustive. There are other forms of retaliation.

RESPONSIBILITY: Each level of management is responsible for ensuring that all personnel policies, procedures, and activities are in full compliance with applicable federal, state, and local equal employment laws, statute, rules, and regulations regarding discrimination. Employees are expected to read, understand, and follow the policies that Judson Motors, Ltd. d/b/a Universal Toyota has established to prevent discrimination.

REPORTING PROCEDURES: Any employee or candidate for employment who believes that he or she has been subjected to discrimination is expected to report the alleged act as soon as possible to that person's immediate supervisor, any supervisor or manager with Judson Motors, Ltd. d/b/a Universal Toyota or the Human Resources Department. The Human Resources Department may be contacted at 12102 IH 35 North, San Antonio, Texas 78233, or by telephone at (210) 654-1515. Supervisors and managers who are informed of an alleged incident of discrimination must immediately notify the Human Resources Department. In addition to reporting a complaint of discrimination to company officials, a person may also contact the U.S. Equal Employment Opportunity Commission, and file a charge of employment discrimination. The address and telephone number of the EEOC office is 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229; 1 (866) 408-8075, 1 (800) 669-4000 OR 1 (210) 281-7610 (TTY). Information about employment rights and the procedures dealing with how to file a charge is available on the Internet at www.eeoc.gov.

INVESTIGATION OF COMPLAINTS: A complete investigation of each complaint will be undertaken immediately by the Human Resources Department. The investigation may include interviewing employees and supervisors at the facility, and the inspection of documents, including personnel records, and a full inspection of the premises.

PUNISHMENT FOR VIOLATION: Employees who engage in discrimination can expect serious disciplinary action. After an appropriate investigation, any employee, whether management or non-management, who has been found to have engaged in discrimination against another employee will be subject to appropriate sanctions, depending on the circumstances, from a written warning placed in his/her personnel file up to and including termination of employment.

RETALIATION: There shall be no retaliation against any employee because that person has opposed what they believe to be unlawful employment practices, including discrimination; or has filed a charge of discrimination, or has given testimony, assistance, or has participated in any manner in any investigation, proceeding or hearing under the ADEA, as amended. Judson Motors, Ltd. d/b/a Universal Toyota will not punish you for reporting discrimination simply because you have made a complaint under the above guidelines.

Date

Judson Motors, Ltd. d/b/a Universal Toyota

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF TWO (2) YEARS.